



PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
58268.00003

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed
Name _____

Application Number:

09/528,001

Filed: March 17, 2000

First Named Inventor:

Shiri Kadambi

Art Unit: 2668

Examiner: Thai D. Hoang

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

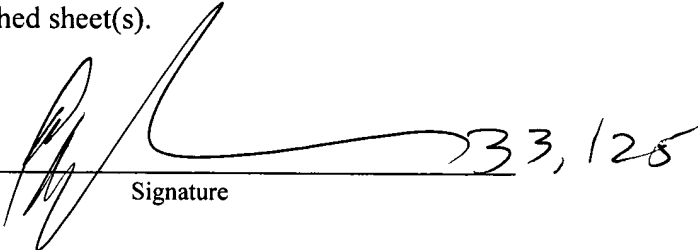
The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ Applicant/Inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed
- ☒ Attorney or agent of record.
Registration No. 45,689

- ☐ Attorney or agent acting under 37 CFR 1.34.
Reg. No. is acting under 37 CFR 1.34 _____


Signature

N. Alexander Nolte
Typed or printed name

703-720-7894
Telephone number

April 24, 2006
Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- ☒ *Total of 2 forms are submitted.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Shiri KADAMBI et al.

Art Unit: 2668

Application No.: 09/528,001

Examiner: Thai D. Hoang

Filed: March 17, 2000

Attorney Dkt. No.: 58268.00003

For: NETWORK SWITCH STACKING CONFIGURATION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

April 24, 2006

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-7 in the above identified application. Claims 1-7 were finally rejected in the Office Action dated January 23, 2006, Applicants filed a Response to the Final Office Action on February 22, 2006, and the Office issued an Advisory Action dated March 20, 2006 maintaining the final rejections of claims 1-7. Applicants hereby appeal these rejections and submit this Pre-Appeal Brief Request for Review.

Applicants respectfully submit that a *prima facie* case supporting the rejection of claims 1-7 under 35 U.S.C. §102 and §103 has not been established, and that there is clear error in the interpretation of the cited prior art supporting the rejections of claims 1-7.

More particularly, in the Final Office Action dated January 23, 2006, claims 1, 2, and 7 were finally rejected under 35 U.S.C. 102(a) as being unpatentable over *Muller* (U.S. Patent No. 5,909,686), hereinafter referred to as *Muller I*. The Office Action took the position that *Muller I* teaches each and every element recited in claims 1, 2, and 7. Applicants respectfully submit that clear error exists in the Office Action's characterization of *Muller I* in the rejection, and that *Muller I* in fact does not teach or disclose each and every element recited in claims 1, 2, and 7.

More particularly, independent claim 1 recites a first and second network switches in a stacked switch configuration, wherein an internet port interface controller (IPIC) is positioned between stacking ports of the respective switches, *i.e.*, a first stacking port and a second stacking port are “communicatively connected through the first and second IPICs.” Referring to Figure 2 of *Muller I* and the associated discussion at columns 2-4, Applicants note that an IPIC is not shown or discussed as being in the transmission path between the stacking ports 225 of the respective switches, and as such, *Muller I* does not teach or disclose that the first and second stacking ports are connected “through the first and second IPICs,” as expressly recited in Applicants’ independent claim 1. Thus, Applicants submit that clear error has occurred in making these rejections.

In response to Applicants’ traversal taking the position that *Muller I* does not teach an IPIC positioned such that the first and second stacking ports are connected through the IPIC, the Advisory Action dated March 20, 2006, took the position that *Muller I*, at column 4, lines 50-53, teaches that “internal links” may be used to interconnect switching elements to create larger switches, and that the internal links are equivalent to Applicants’ internet port interface controller (IPIC). Applicants again submit that the characterization of *Muller I* is in clear error, as the internal links recited in *Muller I* are not equivalent in any way to the internet port interface controller recited in Applicants’ claim 1. To define the internet port interface controller recited in Applicants’ claim 1, Applicants point to the discussion of the IPIC on page 103 of the application at the paragraph beginning with “Figure 28 is an overview of the functional elements of an IPIC 90.” The IPIC is described as including tables 91, a network buffer pool (NBP) 92, and arbiter 93, and flow control logic 94. The internal links briefly mentioned in *Muller I*, without any detailed description thereof, do not teach any sort of controller or controller related components, as recited in Applicants’ independent claim 1. Therefore, Applicants submit that the Office Action has made a clear error in applying *Muller I* as teaching the IPIC recited in Applicants’ claim 1. As such, reconsideration and withdrawal of the rejection of independent claim 1, along with dependent claim 2, is respectfully requested.

Independent claim 7 recites a switching method wherein incoming packets switched through to an egress port via at least one IPIC, wherein the egress port includes any of the plurality of data ports on either of the first and second network switches. Therefore, in similar

fashion to claim 1, the IPIC is again recited as being positioned in the switching path such that the packet travels through the IPIC before being transmitted via the egress port. As noted above, Applicants submit that the “internal links” briefly discussed in *Muller I* do not anticipate the structure (the positioning of the IPIC such that the packets travel through the IPIC on the way to the egress port) or functionality (the IPIC is a controller, not merely a communication link) of the IPIC recited in Applicants’ claim 7. Therefore, Applicants submit that the Office Action taking the position that the “internal links” of *Muller I* anticipate Applicants’ IPIC constitutes clear error. Reconsideration and withdrawal of the rejection is respectfully requested.

Further, with regard to the rejection of claims 1, 2, and 7, Applicants submit that it is well established that a reference cited in support of a §102 rejection must teach each and every element recited in the rejected claims. In rejecting claims 1, 2, and 7, the Office Action drew the broad conclusion that since *Muller I* discloses Ethernet packet switches, then “each of the switch elements 100 in the system shown in Figure 1 adds to each of the incoming data packets an Ethernet header, which comprises a plurality of header fields.” However, Applicants submit that this broad conclusion is not supported by the disclosure of *Muller I*, and further, that this was acknowledged in the Advisory Action where the Examiner states that he “believes that all data packets transmit in a packet switching system must have a header, which includes an ID field,” and therefore, *Muller I* teaches each and every element recited in claims 1, 2, and 7. Applicants submit that the Examiner’s statement constitutes clear error, as a reference cited in a §102 rejection must teach each and every element recited in the rejected claim. A rejection based upon the Examiner’s “belief” or knowledge of one of ordinary skill in the art is appropriate for a §103 rejection, not a §102 rejection. As such, Applicants submit that a clear error in making these rejections has occurred, and reconsideration and withdrawal of the rejection is respectfully requested.

Claims 3-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Muller I* in view of *Muller* (U.S. Patent No. 6,119,196), hereinafter referred to as *Muller II*. The Office Action took the position that *Muller I* teaches each and every element recited in claims 306, except for the cascading interface including an arbiter; however, the Office Action took the position that *Muller II* teaches an arbiter, and therefore, the Office Action concluded that it would have been obvious for one of ordinary skill in the art to combine the teaching of the

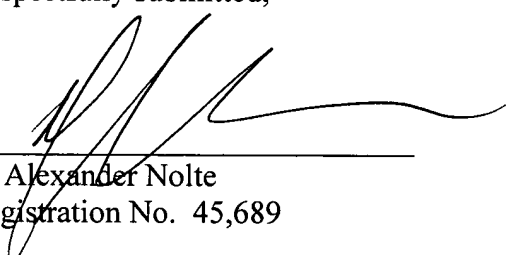
references to generate the claimed invention. Applicants submit that there is clear error in making these rejections.

Specifically, Applicants submit that neither *Muller I* nor *Muller II* teach, show, or suggest the IPIC recited in Applicants' independent claim 1, the independent claim from which claims 3-6 depend. Therefore, Applicants submit that *Muller II* does not further the teaching of *Muller I* to the level necessary to support an obviousness rejection. As such, Applicants submit that there is clear error in interpreting the references, and reconsideration and withdrawal of the rejection is respectfully requested. Further, claim 3 expressly recites that an arbiter is positioned in the stacking ports. As acknowledged by the Office Action at the end of page 4 through the beginning of page 5, neither of the *Muller* references teach that the arbiter is positioned in the stacking port. Since the structural position of the arbiter is expressly recited in claim 3, a proper rejection under §103 must show a reference that teaches, shows, or suggests that the arbiter taught by *Muller II* could be combined into the stacking port taught by *Muller I* to generate the structural configuration expressly recited in Applicants' claims. Applicants submit that there is no such teaching, showing, or suggestion to be found in either of the *Muller* references, and as such, clear error in making these rejections has occurred. Reconsideration and withdrawal of the rejection of claims 3-6 is respectfully requested.

In conclusion, Applicants submit that the Office Action made a clear error in interpreting the references cited in support of the §102 and §103 rejections. Applicants submit that neither *Muller I* nor *Muller II* teach, show, or suggest each of the limitations recited in Applicants' independent claims 1 and 7. More particularly, Applicants submit that the cited combination of references fails to teach, show, or suggest an internet port interface controller that is positioned such that packets traveling between stacking ports must travel through the internet port interface controller.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,


N. Alexander Nolte
Registration No. 45,689

33,125

Customer No. 32294
SQUIRE, SANDERS & DEMPSEY LLP
14TH Floor
8000 Towers Crescent Drive
Tysons Corner, Virginia 22182-2700
Telephone: 703-720-7800
Fax: 703-720-7802

NAN:kzw

Enclosures: Notice of Appeal
Check No. 14368